

THE HON'BLE MRS JUSTICE T.MEENA KUMARI

and

THE HON'BLE MR JUSTICE P. LAKSHMANA REDDY

WRIT PETITION NO : 10395 of 2005

DATED: 05-10-2005

BETWEEN:

DR MOHD.AZEEMUDDIN .. PETITIONER

AND

THE GOVT. OF AP. REP.BY ITS PRINCIPAL

SECRETARY, HEALTH, MEDICAL AND FAMILY

WELFARE DEPARTMENT, SECRETARIAL AND OTHERS

.. RESPONDENTS

THE HON'BLE MRS JUSTICE T.MEENA KUMARI

and

THE HON'BLE MR JUSTICE P. LAKSHMANA REDDY

WRIT PETITION NO : 10395 of 2005

JUDGMENT: (Per Hon'ble Sri Justice P.Lakshmana Reddy)

This writ petition is filed to quash the orders of the A.P.Administrative Tribunal, Hyderabad (for short 'the Tribunal) in O.A.No. 7678 of 2003, dated 04.04.2005 and to set aside the G.O.Ms.No.262, HM & FW, dated 06.06.1995 and G.O.Ms.No.33, HM & FW dated 27.01.1995 in so far as the unofficial respondents 3 and 4 are concerned and also seeking direction to the official respondents 1 and 2 to pay the salary and other allowances with consequential benefits to the writ petitioner with exemplary costs.

The relevant facts in brief are as follows:

The writ petitioner is a retired government servant retired as Post Graduate Reader in the year 1998. The writ petitioner along with unofficial respondents Dr.Hafeez Sarwari (3rd respondent) and Dr.Syed. Abrar (4th respondent) were promoted as readers in G.O.Ms.No.33, HM & FW dated 27.01.1995 and the same was reviewed in G.O.Ms.NO.262, HM & FW, dated 06.06.1995 giving promotion with retrospective effect from 03.03.1994 and again the said orders were reviewed in G.O.Ms.No.407, dated 02.11.2001 at the instance of the writ petitioner and as per the directions of the Tribunal in O.A.NO.7456 of 1992, dated 29.11.1993 promoting the same officers as Readers viz. the writ petitioner and others referred supra notionally with effect from 07.07.1992. In all the said three Government Orders promotions were given fixing the seniority among the writ petitioner and two others and in the said seniority the 3rd and 4th respondents are shown as Sl.Nos.1 and 2 and the writ petitioner is shown as Sl.No.3. The writ petitioner got the promotion only under the said Government Orders and got the benefit. But, the writ petitioner is aggrieved of the seniority fixed in the above said Government Orders placing the unofficial respondents 3 and 4 above him. With the said grievance the writ petitioner approached the Tribunal by filing O.A.No.7678 of 2003. In the said O.A. the writ petitioner pleaded that the promotions were given to all of them under

the old rules of the years 1983 which were revised by special rules in the year 1994 and that as the special rules superseded the rules of the year 1983 and were in vogue from 27.01.1995 the promotion to the unofficial respondents 3 and 4 shall not be effected under the old rules and if the promotions are taken up under the new rules the unofficial respondents

3 and 4 were not entitled for promotion as they were juniors in the seniority list of medical officers i.e. initial cadre to Sl.Nos.33 and 36 who were denied promotion on the ground that they did not possess the required qualification of M.D. Unani in the speciality and three years teaching experience in that cadre which were essential only under the old rules which were superseded in the year 1995 wherein the rules did not contemplate the speciality in the concerned subject for Reader promotion. The writ petitioner further pleaded in the said O.A. that the notional promotions with retrospective effect was given only on three instances as per the directions of the Tribunal in O.A.No. 7456 of 1992, dated 28.02.1997 and the direction of the Tribunal was only to consider the promotion of the writ petitioner alone as Reader under the old rules with effect from 07.07.1992 and hence the said direction of tribunal does not apply to the respondents 3 and 4 and the respondents 3 and 4 never claimed promotion under the old rules and therefore the respondents 3 and 4 were ineligible to claim promotions under the old rules after 26.05.1994 on which date the new rules came into force and that the Government has no jurisdiction or power to enforce the old rules when new rules were in vogue. In this regard the writ petitioner quoted a decision of this Court in W.P.No.4601 of 2001 relating to some others in which this Court observed that the authorities ought to have effected promotions by following the old rules in vogue as on that date i.e. by following the New Rules and not by following the rules, which were superseded and have no locus standi. The writ petitioner further pleaded that the official respondents have no jurisdiction or power to place the respondents 3 and 4 above him while promoting the writ petitioner and respondents 3 and 4 as Readers. He further pleaded in the said O.A. that the government has not communicated the seniority list in

the cadre of feeder post i.e. senior medical officer before placing the above said officers above in Reader cadre. The contention of the writ petitioner is that his promotion is considered rightly under the old rules but the promotion of respondents 3 and 4 ought not to have been considered under the old rules.

The official respondents filed counter-affidavit before the Tribunal contending that the Government has issued G.O.Ms.No.33, dated 27.01.1995 promoting the respondents 3 and 4 and the applicant (the writ petitioner) as Readers in the speciality of Moulejat on the basis of the recommendations of the Departmental Promotions Committee and the respondents 3 and 4 and others who possess P.G. qualification, were promoted as Readers in P.G. Units, according to their seniority and the remaining persons were promoted as Chief Medical Officers and Professors in the said G.O. and the writ petitioner is also one of the officers, who were promoted as Reader in P.G. Unit in the speciality of Moulejat. It is further contended that in supersession of ad hoc rules, issued in G.O.Ms.No.430 Health Medical and Family Welfare Department, dated 14.07.1983 and the other rules issued, based on the recommendations of the One Man Commission, Government revised the Special Rules and issued G.O.Ms.No.265, HM and FW Department, dated 26.05.1994 and according to the revised rules, the Reader posts can be filled from the feeder categories, with approved probationers, who had put in three years of regular service and according to note 3 under Rule 3 of the Special Rules, the teaching posts in the Ayurved and Unani colleges shall be filled, as far as possible, by posting of those who possess P.G. qualification in the respective systems of Indian Medicine and the promotions to the posts are to be made according to seniority, where merit and ability of the candidates are approximately equal and accordingly the writ petitioner and his seniors respondents 3 and 4 were promoted as Readers according to their seniority and that the posts in P.G. Units were earlier governed by the ad hoc rules, issued in G.O.Ms.No.430, dated 14.07.1983, according to which, for promotion to the post of Reader, one must possess M.D. Unani in the

speciality concerned with not less than three years experience in P.G. in the concerned speciality and that the writ petitioner possessed P.G. qualification in the speciality, Moulejat and qualified to hold the post of Reader, as per the ad hoc rules issued in G.O.Ms.No.430, dated 14.07.1983 and similarly the respondents 3 and 4 also possess P.G. qualification in that speciality and they are seniors to the writ petitioner and also eligible for promotion to the post of Reader and they were also seniors to the writ petitioner in the feeder category. The official respondents in the counter-affidavit has given the table showing the teaching experience of all the three and the dates of their joining. As per the table the 3rd respondent passed MD in January, 1982 and had experience of 11 years 11 months, 4th respondent passed MD in October, 1977 and had experience of 11 years 5 months in teaching by the year 1995. Whereas the writ petitioner passed MD in June, 1988 and gained teaching experience of only 5 years 8 months. The official respondents further pleaded that the respondents 3 and 4 are entitled for promotion as Readers both under the old rules as well as under the new rules and they were admittedly seniors to the writ petitioner in the seniority list of lower cadre and therefore the application filed by the writ petitioner is devoid of merits and is liable to be dismissed.

After hearing the applicant in person and also the learned Government Pleader and after perusing the record, the learned Tribunal considered the contentions raised by the writ petitioner/applicant and dismissed the application. In the said orders, the learned Tribunal considered the seniority and the qualification of the respondents 3 and 4 and the writ petitioner and held that there appears to be no substance in the contention of the applicant/writ petitioner that he alone should be given promotion with effect from 07.07.1992 and the unofficial respondents are not entitled for the same. The learned Tribunal observed that the applicant on one hand says that the old rules have no locus standi and cannot be applied and on the other hand the applicant says that the old rules to be applied to him and according to the applicant promotion with

retrospective effect from 07.07.1992 has to be given to him only applying the old rules and the new rules are to be applied to the respondents 3 and 4 and that obviously the same rules to be applied either to the applicant or to the respondents 3 and 4. The learned Tribunal considered the decision of this Court in W.P.No.4601 of 2001 relating to some others relied on by the writ petitioner and observed that it is not applicable in the instant case as the applicant has taken two different stands contrary to each other. The learned Tribunal further observed that all these days though the applicant has been filing several O.As. he never questioned his position either in G.O.Ms.No.33, dated 27.01.1995 or G.O.Ms.No.262, dated 05.06.1995 and it is only two years after the issue of G.O.Ms.No.407, dated 02.11.2001, the applicant has chosen to question the said government orders and therefore the claim of the applicant is hopelessly time barred and in any view of the matter, the applicant is not entitled for the relief sought for by him, with such findings, the Tribunal dismissed the said Original Application filed by the writ petitioner herein.

Aggrieved by the same, the present writ petition is filed by the writ petitioner reiterating the very same contentions raised in the O.A. No.7678 of 2003 filed before the Tribunal. The official respondents contested the writ petition and filed counter-affidavit reiterating the stand taken in the counter-affidavit filed before the Tribunal.

During the course of hearing of the writ petition, the writ petitioner who appeared in person contended that if the new rules are applied, the respondents 3 and 4 will not get promotion in the year 1995 as they are juniors to Sl.Nos.33 and 36 of *'the final integrated seniority list of the Junior Medical Officers/Lecturers (Unani)'* and that the old rules which were superseded by the new rules cannot be adopted for giving promotions to the respondents 3 and 4, the official respondents have no jurisdiction to promote the respondents 3 and 4

before promoting Sl.Nos.33 and 36 of '*the final integrated seniority list of the Junior Medical Officers/Lecturers (Unani)*' who are seniors to the respondents 3 and 4 respectively.

On the other hand, the learned Government Pleader submitted that admittedly in the seniority list, the writ petitioner is far junior to others as he is placed at Sl.No.53; whereas the respondents 3 and 4 are placed at Sl.Nos.41 and 45 and that the respondents 3 and 4 are eligible for promotion both under old rules and new rules. Therefore, the writ petitioner cannot become senior to them and hence the writ petition is devoid of any merits and the Tribunal has rightly dismissed the application filed by the writ petitioner and there is no need for interference by this Court.

The points that arise for consideration in this writ petition are:

1. Whether the writ petitioner is entitled for seniority as Reader over the unofficial respondents 3 and 4?
2. Whether the orders of the Tribunal passed in O.A.NO.7678 of 2003, dated 04.04.2005 are sustainable in law?
3. To what relief?

POINTS 1 AND 2:

It is not disputed that in the 'final integrated seniority list of the Junior Medical Officers/Lecturers (Unani)' the respondents 3 and 4 are far seniors to the writ petitioner as the writ petitioner was appointed on 21.02.1979 whereas the 3rd respondent was appointed on 14.02.1972 and the 4th respondent was appointed on 19.02.1978. The 3rd respondent was regularized on 05.10.1974 and the 4th respondent was regularized on 19.02.1978. Whereas the writ petitioner was regularized on 21.02.1979 as per '*the final integrated seniority list of the Junior Medical Officers/Lecturers (Unani)*' filed by the writ petitioner himself. It is also not disputed that the respondents 3 and 4 were having required qualifications to be promoted as

Readers both under the old rules and also under the new rules. The writ petitioner was given notional promotion with retrospective effect on 03.03.1994 at the first instance and with effect from 07.07.1992, at the second instance as per the directions of the Tribunal in O.A.No.7456 of 1992, dated 29.11.1993. As the vacancies of Readers arose as on 07.07.1992 and by that date the respondents 3 and 4 and also the writ petitioner qualified themselves to be promoted as Reader, the promotion was given effect to from 07.07.1992. The date of vacancy is to be taken into consideration for the purpose of considering the eligibility or otherwise for promotion of the candidates in the feeder category. As admittedly there were three vacancies as on 07.07.1992 and as admittedly by then only old rules of the year 1983 were in force, the candidates have to be selected only as per the rules then in vogue. The judgment of this Court relied on by the writ petitioner is not applicable to the facts of this case, as the promotions were given retrospective effect from 07.07.1992 and as there were three vacancies as on that date. Curiously enough, the writ petitioner wanted to apply the old rules only for his promotion and not for the promotion of the respondents

3 and 4. The peculiar contention of the writ petitioner is not at all tenable. The Tribunal has rightly rejected such contention. Further, the writ petitioner did not question the G.O.Ms.NO.33, dated 27.01.1995 in G.O.Ms.No.262, dated 05.06.1995 till the year 2003. Even the G.O.Ms.No.407, dated 02.11.2001 was also not challenged for a period of more than two years. Therefore, the Tribunal rightly observed that the application is liable to be dismissed on the ground of laches also. The

inter-se-seniority fixed in the year 1995 is challenged in the year 2003 and therefore the Tribunal observed that the claim of the writ petitioner is hopelessly time barred. Even otherwise on merits also the writ petitioner has got no case as he is admittedly far junior to the respondents and as the respondents 3 and 4 were qualified to be promoted as Readers even by the year 1992. Hence, both these points are found against the writ petitioner.

POINT NO.3:

In view of the aforesaid findings on points 1 and 2, the writ petition is liable to be dismissed.

Accordingly, the writ petition is dismissed. No costs.

T.MEENA KUMARI, J

P.LAKSHMANA REDDY, J

Dated: 05.10.2005

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